

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

SHALER EAGLE,

Petitioner,

v.

**Civil Action No. 2:11cv8
(Judge Bailey)**

WEST VIRGINIA PAROLE BOARD,

Respondent.

**REPORT AND RECOMMENDATION ON
PETITIONER'S MOTION FOR SUMMARY JUDGMENT
AND MOTION FOR DEFAULT JUDGMENT**

This § 2254 habeas corpus action was initiated on January 28, 2011. The petitioner was granted permission to proceed as a pauper on February 10, 2011, but directed to pay the required \$5.00 filing fee. The petitioner paid the required filing fee on February 17, 2011. Although ripe for review, this case has not yet had an initial screening pursuant to Rule 2 of the Local Rules of Prisoner Litigation.

On February 11, 2011, the petitioner filed a motion for summary judgment. In his motion, the petitioner asserts that there are no genuine issues of material fact and that he is entitled to judgment as a matter of law.

On March 17, 2011, the petitioner filed a motion for default judgment pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. In the motion, the petitioner asserts that he sent a copy of his petition to counsel for the respondent on February 10, 2011, and that the respondent has failed to file a response to his petition.

Upon a review of the file, it is clear that the petitioner's motions are premature. At this time, the respondent has not yet been ordered to file a response to the petition. Thus, the Court cannot determine whether genuine issues of material fact remain. Additionally, because the respondent has not yet been directed to file a response to the petition, no response is due and the respondent cannot be in default. Accordingly, it is recommended that the petitioner's Motion for Summary Judgment (dckt. 14) and Motion for Default Judgment (dckt. 19) be **DENIED without prejudice as premature.**

Within **fourteen (14) days** after being served with a copy of this Report and Recommendation, any party may file with the Clerk of Court written objections identifying those portions of the recommendation to which objection is made and the basis for such objections. A copy of any objections shall also be submitted to the Honorable John Preston Bailey, United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to send a copy of this Report and Recommendation to the *pro se* petitioner by certified mail, return receipt requested, to his last known address as shown on the docket, and to counsel of record via electronic means.

DATED: March 17, 2011.



DAVID J. JOEL
UNITED STATES MAGISTRATE JUDGE